

**REMARKS****INTRODUCTION**

In accordance with the foregoing, claims 27 and 34 have been amended. No new matter has been submitted and reconsideration of the allowability of the pending claims is respectfully requested.

Claims 1-38 are pending, with claims 1-8, 15-21, and 27-33 being under consideration. Claims 9-14, 22-26, and 34-38 have been withdrawn from consideration by the Office Action.

**REJECTIONS UNDER 35 USC 101**

The Office Action has rejected claims 34-38 under 35 USC 101, as being directed to non-statutory matter.

However, applicants note that claims 34-35 have been withdrawn from consideration. Accordingly, applicants will address this rejection upon any future withdrawal of the previously required restriction.

**REJECTIONS UNDER 35 USC 102**

Claims 1-5, 15, 16, 18, 27, 28, and 30 stand rejected under 35 USC 102 as being anticipated by Oqihara, U.S. Patent No. 6,868,051 or EP 191529. This rejection is respectfully traversed. Below, applicants will reference U.S. Patent No. 6,868,051 when referencing Oqihara.

The Office Action has interpreted Oqihara as disclosing the claimed wobble amplitude detector to detect an amplitude of a wobble formed on the recording medium based on an output signal of the RF amplifier, and the system controller to discriminate a recording medium type of the recording medium by comparing the wobble amplitude with a reference value.

Here, it is briefly noted that independent claims 1, 15, and 27 particularly require the amplitude of the wobble formed on the recording medium to be detected, and further particularly requires the wobble amplitude to be compared with a reference value.

Rather than disclosing these features, Oqihara actually shows two primary embodiments where detection levels of two band-pass filter samples of a push-pull signal are compared to each other (as shown in FIG. 3), and where wobble frequencies of two samples are compared to each other. (as shown in FIG. 5).

In particular, in the apparently relied upon FIG. 3 embodiment of Oqihara, the detection

levels of the separate two band-pass filters **do not** represent the amplitude of the wobble.

The present application particularly illustrates in FIG. 2 the appropriate example of how the term amplitude must be interpreted. Alternate interpretations of the term "amplitude" that are thus inconsistent with this example are thus not appropriate and are thus unreasonable.

As shown in FIG. 2 of the present application, amplitude corresponds to the height of the wobble on the recording medium. One example claimed in the present invention is the peak-to-peak amplitude of the wobble.

In this regard, though claim limitations are to be interpreted in light of its broadest reasonable interpretation, the broadest reasonable interpretation must also conform to the broadest reasonable interpretation afforded by one of ordinary skill in the art when read in light of the specification. *In re Prater*, 162 USPQ 541, 550-51, *In re Morris*, 44 USPQ2d at 1027, MPEP 2111.01 (7<sup>th</sup> Ed., rev. 1)(Feb. 2000). Also see *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 [75 USPQ2d 1321] (Fed. Cir. 2005).

Accordingly, based upon the proper interpretation of the amplitude of the wobble, the detection level of a band-pass filter sample of the push-pull signal is not the same as the amplitude of the wobble. **This is further evident by Ogihara using two different band-pass filtered samples of the same wobble, and the levels of the two samples potentially being substantially different depending on the type of medium.**

Further, Ogihara must perform two separate samplings with two different band-pass filter samplings. Conversely, embodiments of the present invention set forth comparing the wobble amplitude to a reference value. Here, in addition to the difference in wobble measurements, the claimed reference value used for comparison with the wobble amplitude cannot be considered the same as a concurrently calculated band-pass filtered.

Thus, Ogihara performs a different technique for detecting a medium type based upon band-pass filtered samples of the push-pull signal, without performing the claim wobble amplitude detection.

## REJECTIONS UNDER 35 USC 103

Claims 6-8, 17, 19-21, 29, and 31-33 stand rejected under 35 USC 103(a) as being obvious over Ogihara, in view of Morita, U.S. Patent No. 6,207,247. This rejection is respectfully traversed.

Briefly, applicants note that the proposed modification rationale for modifying Ogihara is nearly the same rationale presented in the previous Office Action for modifying a different primary reference.

It is respectfully submitted that this if further evidence that the proffered motivation for modifying Ogihara is insufficient to maintain a prima facie obviousness case.

Merely because a reference can be modified does not mean that the same modification is obvious. Here, the previous Office Action proposed that it was obvious to modify the previous primary reference for nearly the same rationale, again without any real connection with the underlying reference.

If this motivation were sufficient, then it would be obvious to make the same proposed modification to each and every reference in the same field, regardless of the underlying needs or appropriateness of such modification.

Conversely, there must be some connection with the underlying Ogihara, there must be some need for the proposed modification, and a prima facie obviousness case requires that the proposed modification have some reasonable chance of success. However there is no evidence in the record of how the proposed modification would be implemented, or whether the same would even work.

Rather, the Office Action relies upon Morita to disclose wobble amplitudes in a dvd+rw disc and further argues that a dvd-rw disc range would similarly be derivable.

The Office Action sets forth that such a use of such ranges in Ogihara would have been obvious "in order to set an appropriate threshold value, or ranges of values that are indicative of the breaking point between dvd-rw and dvd+rw amplitude[s]. Selection of such is an optimization of the system and obvious predicated upon the well known dvd-rw amplitude range."

Here, this is exactly the same recited motivation the previous Office Action cited for proposing to modify the then primary reference. Thus, the proposed motivation does not have any connection to the underlying primary reference.

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Further, as noted above, the technique presented in Oqihara does not need to know any wobble amplitudes. Rather, the system of Oqihara particularly avoids detecting any amplitudes of any wobbles and uses band-pass filtering sampling of two different frequency ranges.

Accordingly, there is no evidence in the record that discloses or suggest that the wobble amplitudes discussed in Morita would have any relevance with the system of Oqihara. Thus, it is respectfully submitted that it would not have been obvious to modify Oqihara as proffered in the Office Action.

Withdrawal of this rejection is respectfully requested.

#### CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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